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Administrative Tribunal

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ORIGINAL: ENGLISH

ADMINISTRATIVE TRIBUNAL

Judgement No. 651

Case No. 707: EL-SAID

Against: The Commissioner General of the United Nations Relief and Works Agency for Palestine Refugees

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Samar Sen, President; Mr. Hubert Thierry; Mr. Francis Spain;

Whereas, on 2 May, 26 June and 24 July 1992, Ali El-Said, a former staff member of the United Nations Relief and Works Agency for Palestine Refugees, hereinafter referred to as UNRWA, filed an application that did not fulfil all the formal requirements of article 7 of the Rules of the Tribunal;

Whereas, on 3 August 1992, the Applicant, after making the necessary corrections, again filed an application requesting, inter alia:

> "...net salary for the period between the date of separation (15/02/1991) and the date of the Tribunal's decision."

Whereas the Respondent filed his answer on 3 June 1993;

Whereas the Applicant filed written observations on 6 December 1993;

Whereas, on 26 May 1994, the Applicant clarified that what he sought from the Tribunal was:

> "1. Compensation for the elapsed time since termination according to UNAT Statute and Rules.

2. Same or similar post or financial settlement.

3. ... In-service training..."

Whereas, on 27 June 1994, the Tribunal put questions to the Respondent to which he provided answers on 28 June 1994;

Whereas the facts in the case are as follows:

The Applicant entered the service of UNRWA on 18 January 1990, as a Senior Vocational Training Instructor (Mechanic), grade 10, step 1 level, at the Siblin Training Centre in Lebanon. Under section 2 of the letter of appointment, his appointment was subject to probationary service of one year.

On 7 April 1990, the Deputy Principal and Chief Instructor, who was the Applicant's immediate supervisor, wrote to the Principal of the Siblin Training Centre to report on the Applicant's unsatisfactory performance. He stated that the Applicant had no control over his classes "due to his weak personality and due to [the] lack of knowledge of the material he is supposed to teach. Besides, he lacks reasonable judgement for solving problems or making decisions."

On 24 April 1990, the Principal of the Siblin Training Centre, through the Field Education Officer, recommended to the Field Personnel Officer that the Applicant's services with the Agency be terminated because of his inefficiency. The Field Education Officer, however, recommended that the Applicant be given more time to improve his work performance. In a letter dated 27 April 1990, the Principal warned the Applicant that as the quality of his work, both professionally and administratively, had been unsatisfactory, he should improve his performance. He added that: "Should no improvement show itself in your performance, appropriate action will be taken."

In a memorandum dated 9 January 1991, to the Field Education Officer, the Principal of the Siblin Training Centre evaluated the Applicant's performance. He noted that the Applicant had shown no improvement in his ability to control classes, nor in his

professional or administrative skills. He recommended that the Applicant be separated from the Agency "on the grounds of his inefficiency."

Also, in the Applicant's performance evaluation report, his principal supervisor, the Field Education Officer, stated on 6 February 1991: "Separation from service strongly recommended."

After an exchange of correspondence between the authorities at the Centre and the Headquarters Branch in Amman, and with the concurrence of the Director of UNRWA Affairs in Lebanon, on 13 February 1991, the Field Administration Officer informed the Applicant as follows:

> "I regret to advise you that your confirmation in the post of Senior Vocational Training Instructor (Mechanic) at Siblin Training Centre, was not recommended due to your unsatisfactory work performance.
>
> As per instructions in force, there is no other alternative but to terminate your services effective from the close of business on 15 February 1991, as per para. 7 of your Letter of Appointment dated 24 January 1990..."

On 21 February 1991, the Applicant requested the Field Administration Officer to review the decision to terminate his services. In a reply dated 1 March 1991, the Field Administration Officer informed the Applicant that the decision would be maintained "in view of the clear reasons which made it unavoidable."

On 15 July 1991, the Applicant lodged an appeal with the Joint Appeals Board (JAB), through a communication to the Director of Personnel at UNRWA Headquarters.

On 28 October 1991, the Secretary of the JAB informed the Applicant as follows:

> "Further to my letter of 12 September 1991, I hereby inform you that the preliminary consideration of your appeal case by the members of the Joint Appeals Board comprised of ..., has not eventuated the entertainment of your appeal case since you have failed to observe the time limits governing appeal procedures ... as in accordance with paragraph 3(B) of staff rule 111.3.

Attached please find a summary of the chronological sequence of events that have led to the aforementioned decision of the Joint Appeals Board, together with the relevant comments.

Event	Date	Comments
1. Decision to terminate your services with the Agency	13.01.91	
2. Your request to Administration to review its decision in your respect	21.02.91	Consistent with para. 2 of staff rule 111.3.
3. Administration's reply to your request	01.03.91	Consistent with para. 3 (B) of staff rule 111.3.
4. Your appeal to Secretary, Joint Appeals Board	15.07.91	Not consistent with para. 3 (B) of staff rule 111.3, as the ultimate date for appealing would have been 22 March 1991."

However, on 15 November 1991, one of the members of the Joint Appeals Board wrote to the Secretary of the Board, as follows:

"1. First, I would like to refer you to the content of my letter dated 8 October 1991 and addressed to Chairman JAB (a copy to you) where I assured the need of holding the Board as the case is considered justified.

2. I don't agree to the decision taken by Chairman JAB and I assure that I don't share ... the same view.

3. Regarding staff rule 3(B) III.3 [the Applicant] who is newly appointed, is not well aware of this rule.

4. Para. 4 of staff rule III.3 says that the Board may waive time limits in exceptional circumstances is applicable

to this case, as Lebanon in a whole is living the most exceptional circumstances.

5. So, and in light of the above-mentioned, I still request to consider the case and to hold the Board."

In a reply dated 21 November 1991, the Secretary, JAB, wrote to the member of the Board, as follows:

"With reference to your letter dated 15 November 1991, in respect of [the Applicant's] appeal case, please be informed that I have pursued the case further with the other Board members who constitute a majority on the Board and they confirmed their previous opinion of not entertaining the appeal case in question.

Therefore my letter ... dated 28 October 1991, addressed to [the Applicant] and copied to you stands as it is."

On 3 August 1992, the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. The decision to terminate his employment with UNRWA, allegedly due to unsatisfactory work performance, was inappropriate and the assessment on which it was based was biased as a result of interpersonal conflict.

2. The UNRWA Joint Appeals Board did not consider his case.

Whereas the Respondent's principal contentions are:

1. The application is time-barred.

2. The Applicant's services were terminated upon completion of his probation, without prejudice, improper motivation or misuse of authority.

3. The Applicant's performance during probation demonstrated that he was not suited for permanent appointment with UNRWA.

4. The non-granting of a Teaching diploma from the UNRWA Institute of Education at Amman was not tainted by prejudice, improper motivation or misuse of authority.

The Tribunal, having deliberated from 27 June to 20 July 1994, now pronounces the following judgement:

I. The question to be decided by the Tribunal is whether the Applicant's case was considered by a properly established and convened joint appeals body.

II. The answers to the questions posed by the Tribunal to the Respondent, concerning the constitution and procedures followed by the Joint Appeals Board (JAB) in this case, disclose that two of the JAB members were stationed in Vienna and one in Lebanon. The issue of receivability of the Applicant's appeal was dealt with by the Secretary of the JAB, circulating a memorandum identifying the issue and requesting that the members communicate amongst themselves and notify him of their views.

The members of the JAB subsequently informed the Secretary of their views - the majority view being that the Applicant's case was not receivable. This so-called finding was transmitted to the Applicant. But, even after that, one of the members of the JAB was still seeking consideration of the case and the convening of a Board meeting.

III. The Applicant sought the convening of the JAB. His request was not granted and the JAB did not convene. One of the members of the JAB has expressed his dissatisfaction with the procedures adopted.

IV. The Tribunal holds that the procedures followed by the JAB in this case were flawed because the JAB never convened. The Applicant is therefore entitled to have his appeal heard by a

properly convened JAB. Accordingly, in accordance with its jurisprudence in Judgements No. 511, Parker (1991) and No. 598, Nicolas (1993), the Tribunal remands this case to the Respondent for proper consideration by the JAB.

(Signatures)

Samar SEN
President

Hubert THIERRY
Member

Francis SPAIN
Member

Geneva, 20 July 1994

R. Maria VICIEN MILBURN
Executive Secretary